

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA DAVID HEAFNER,

Defendant.

CR 23-109-BLG-SPW

ORDER

On July 24, 2024, the Court held in abeyance Defendant Joshua David Heafner's Motion to Dismiss the Indictment (Doc. 28) until a mandate is filed by the Ninth Circuit in *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024). (Doc. 32).

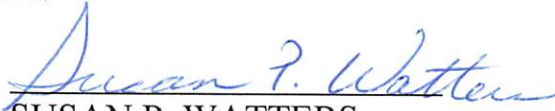
Heafner filed his motion to dismiss after the three-judge panel of the Ninth Circuit in *Duarte* found 18 U.S.C. § 922(g)(1), which prohibits convicted felons from possessing firearms, was unconstitutional as applied to Duarte, a nonviolent felon. 101 F.4th at 691. On July 21, the Ninth Circuit granted rehearing *en banc* in *Duarte*. 101 F.4th 657, *reh'g en banc granted, opinion vacated*, ___ F.4th ___, 2024 WL 3443151 (9th Cir. Jul. 17, 2024).

Upon further consideration, the Court will no longer hold the motion in abeyance. The order granting rehearing *en banc* vacated the panel decision. *Duarte*,

2024 WL 3443151, at * 1 (citing Fed. R. App. P. 35(a); 9th Cir. R. 35-3). As such, the panel's holding is void and no longer has legal effect. No mandate will be filed, and abeyance is no longer warranted.

Accordingly, IT IS HEREBY ORDERED that the abeyance be lifted. IT IS FURTHER ORDERED that the Government shall file a response brief within 14 days of this Order. Heafner's reply is due within 7 days of the Government's response.

DATED this 7th day of August, 2024.


SUSAN P. WATTERS
United States District Court